IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Chen et al.**	§	
	§	Group Art Unit: **3625**
Serial No. **10/666,796**	§	
	§	Examiner: **Michael Misiaszek**
Filed: **September 18, 2003**	§	
	§	
For: **Method of Displaying Real-Time Service Level Performance, Breach, and Guaranteed Uniformity with Automatic Alerts and Proactive Rebating for Utility Computing Environment**	§	

35525

PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on February 21, 2008.

A fee of $510.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

RELATED APPEALS AND INTERFERENCES

This appeal has no related proceedings or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

The claims in the application are: 1-30

B. STATUS OF ALL THE CLAIMS IN APPLICATION

Claims canceled: 13, 18-20, and 26

Claims withdrawn from consideration but not canceled: NONE

Claims pending: 1-12, 14-17, 21-25, and 27-30

Claims allowed: NONE

Claims rejected: 1-12, 14-17, 21-25, and 27-30

Claims objected to: NONE

C. CLAIMS ON APPEAL

The claims on appeal are: 1-12, 14-17, 21-25, and 27-30

STATUS OF AMENDMENTS

No amendments were made after the Final Office Action dated December 31, 2007.

SUMMARY OF CLAIMED SUBJECT MATTER

A. CLAIM 1 - INDEPENDENT

The subject matter of claim 1 is directed to a method in a data processing system for a utility computing environment (**500**) (see *Specification* on page 4, lines 22-24; on page 12, lines 19-30 and in **Figure 5**). Service level thresholds (**580**) are set for the utility computing environment (see *Specification* on page 3, lines 7-11; and on page 13, lines 27-30). The service level thresholds are based on a service level agreement (**520**) with a customer (see *Specification* on page 3, lines 7-11; and page 13, lines 21-24). A view (**560**, **600**, **602**) of a current service level is displayed for the customer (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). A view (**560**, **600**, **602**) is presented of a promised service level based on service level agreement parameters (**550**) (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). A plurality of discrepancies between the promised service level and the current service level is identified (see *Specification* on page14, lines 11-12; and on page 15, lines 9-11). One of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement (see *Specification* on page13, lines 1-8). Another of the plurality of discrepancies occurs in response to breeching to the service level agreement (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). A first rebate (**590**) is generated in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is an amount of time used to successfully complete the service request (see *Specification* on page 20, lines 3-15). The promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement (see *Specification* on page 15, lines 9-13). The completion time of the first rebate is less than the promised completion time (see *Specification* on page 15, lines 18-23). A second rebate (**590**) is generated in response to breeching the service level agreement (see *Specification* on page 12, lines 26-28; on page 13, lines 8-12; and on page 15, lines 11-18). The first rebate and the second rebate are provided to the customer for the plurality of discrepancies (see *Specification* on page 15, lines 9-23; and on page 17, line 16, through page 18, line 21). The first rebate and the

second rebate assure that the customer pays for service rendered (see *Specification* on page 23, lines 8-9).

B. CLAIM 10 - INDEPENDENT

The subject matter of claim 10 is directed to a method in a data processing system for a utility computing environment (**500**) (see *Specification* on page 3, lines 3-7; on page 4, 22-24; on page 12, lines 19-30; and in **Figure 5**). At least one of an infrastructure view (**560**, **600**) and an application view (**560**, **602**) is displayed of a current service level for a customer (see *Specification* on page 3, lines 11-13; on page 16, line 4, through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The infrastructure view contains information technology hardware and software components (see *Specification* on page 16, lines 7-10; on page 17, lines 3, through page 18, line 4). The application view contains software applications residing on utility computing resources (see *Specification* on page 16, lines 11-16). The infrastructure view and the application view are linked (**640**, **642**) (see *Specification* on page 18, lines10-15; and in **Figures 6A** and **6B**). A view (**560**, **600, 602**) is presented of a promised service level based on service level agreement parameters (**550**) (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The infrastructure view and the application view show a relationship between the current service level and the promised service level (see *Specification* on page14, lines 11-12; on page 15, lines 9-11; and in **Figures 6A** and **6B**). The relationship indicates a progress level of a service request with respect to a service level agreement with the customer (see *Specification* on page 16, line 4 through page 17, line 30; and in **Figures 6A** and **6B**). A first rebate (**590**) is generated in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is an amount of time used to successfully complete the service request (see *Specification* on page 20, lines 3-15). The promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is less than the promised completion time (see *Specification* on page 15, lines 18-23). A second rebate (**590**) is generated in response to breeching the service level agreement (see *Specification* on page

12, lines 26-28; on page 13, lines 8-12; and on page 15, lines 11-18). The first rebate and the second rebate are provided to a customer when a plurality of discrepancies between the current service level and the promised service level occurs (see *Specification* on page14, lines 11-12; on page 15, lines 9-23; and on page 17, line 16, through page 18, line 21). The first rebate and the second rebate assure that the customer pays for service rendered (see *Specification* on page 23, lines 8-9). One of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement (see *Specification* on page13, lines 1-8). Another of the plurality of discrepancies occurs in response to breeching to the service level agreement (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). Additional details are retrieved of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view and switching between the infrastructure view and the application view (see *Specification* on page 18, lines 3-21).

C. CLAIM 15 - INDEPENDENT

The subject matter of claim 1 is directed to a data processing system for a utility computing environment (**500**) (see *Specification* on page 4, lines 22-24; on page 12, lines 19-30 and in **Figure 5**). The data processing system provides means for setting service level thresholds (**580**) for the utility computing environment (see *Specification* on page 3, lines 7-11; and on page 13, lines 27-30). The service level thresholds are based on a service level agreement (**520**) with a customer (see *Specification* on page 3, lines 7-11; and on page 13, lines 27-30). The data processing system provides means for displaying a view (**560**, **600**, **602**) of a current service level for the customer (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The data processing system provides means for presenting a view (**560**, **600**, **602**) of a promised service level based on service level agreement parameters (**550**) (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The data processing system provides means for identifying a plurality of discrepancies between the promised service level and the current service level (see *Specification* on page14, lines 11-12; and on page 15, lines 9-11). One of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement (see *Specification* on

page13, lines 1-8). Another of the plurality of discrepancies occurs in response to breeching to the service level agreement (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). The data processing system provides first generating means for generating a first rebate (**590**) in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is an amount of time used to successfully complete the service request (see *Specification* on page 20, lines 3-15). The promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement (see *Specification* on page 15, lines 9-13). The completion time of the first rebate is less than the promised completion time (see *Specification* on page 15, lines 18-23). The data processing system provides second generating means for generating a second rebate (**590**) in response to breeching the service level agreement (see *Specification* on page 12, lines 26-28; on page 13, lines 8-12; and on page 15, lines 11-18). The data processing system provides means for providing the first rebate and the second rebate to the customer for the plurality of discrepancies (see *Specification* on page 15, lines 9-23; and on page 17, line 16, through page 18, line 21). The first rebate and the second rebate assure that the customer pays for service rendered (see *Specification* on page 23, lines 8-9).

D. CLAIM 21 - INDEPENDENT

The subject matter of claim 21 is directed to a computer program product in a computer recordable-type medium having encoded thereon instructions executed on a computer for a utility computing environment (**500**) (see *Specification* on page 4, lines 22-24; on page 12, lines 19-30 and in **Figure 5**). The computer program product provides first instructions for setting service level thresholds (**580**) for the utility computing environment (see *Specification* on page 3, lines 7-11; and on page 13, lines 27-30). The service level thresholds are based on a service level agreement (**520**) with a customer (see *Specification* on page 3, lines 7-11; and on page 13, lines 27-30). The computer program product provides second instructions for displaying a view (**560**, **600**, **602**) of a current service level for the customer (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The computer program product provides third

instructions for presenting a view (**560**, **600**, **602**) of a promised service level based on service level agreement parameters (**550**) (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The computer program product provides fourth instructions for identifying a plurality of discrepancies between the promised service level and the current service level (see *Specification* on page14, lines 11-12; and on page 15, lines 9-11). One of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement (see *Specification* on page13, lines 1-8). Another of the plurality of discrepancies occurs in response to breeching to the service level agreement (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). The computer program product provides fifth instructions for generating a first rebate (**590**) in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is an amount of time used to successfully complete the service request (see *Specification* on page 20, lines 3-15). The promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is less than the promised completion time (see *Specification* on page 15, lines 18-23). The computer program product provides sixth instructions for generating a second rebate (**590**) in response to breeching the service level agreement (see *Specification* on page 12, lines 26-28; on page 13, lines 8-12; and on page 15, lines 11-18). The computer program product provides seventh instructions for providing the first rebate and the second rebate to the customer for the plurality of discrepancies (see *Specification* on page 15, lines 9-23; and on page 17, line 16, through page 18, line 21). The first rebate and the second rebate assure that the customer pays for service rendered (see *Specification* on page 23, lines 8-9).

E. CLAIM 24 - INDEPENDENT

The subject matter of claim 24 is directed to a computer program product in a computer recordable-type medium having encoded thereon instructions executed on a computer for a utility computing environment (**500**) (see *Specification* on page 3, lines 3-7; on page 4, 22-24; on page

12, lines 19-30; and in **Figure 5**). The computer program product provides first instructions for displaying at least one of an infrastructure view (**560**, **600**) and an application view (**560**, **602**) of a current service level for a customer (see *Specification* on page 3, lines 11-13; on page 16, line 4, through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The infrastructure view contains information technology hardware and software components (see *Specification* on page 16, lines 7-10; on page 17, lines 3, through page 18, line 4). The application view contains software applications residing on utility computing resources (see *Specification* on page 16, lines 11-16). The infrastructure view and the application view are linked (**640**, **642**) (see *Specification* on page 18, lines10-15; and in **Figures 6A** and **6B**). The computer program product provides second instructions for presenting a view (**560**, **600**, **602**) of a promised service level based on service level agreement parameters (**550**) (see *Specification* on page 16, line 4 through page 17, line 1; and in **Figures 5**, **6A**, and **6B**). The infrastructure view and the application view show a relationship between the current service level and the promised service level (see *Specification* on page14, lines 11-12; on page 15, lines 9-11; and in **Figures 6A** and **6B**). The relationship indicates a progress level of a service request with respect to a service level agreement with the customer (see *Specification* on page 16, line 4 through page 17, line 30; and in **Figures 6A** and **6B**). The computer program product provides third instructions for generating a first rebate (**590**) in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is an amount of time used to successfully complete the service request (see *Specification* on page 20, lines 3-15). The promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement (see *Specification* on page 13, lines 1-8; on page 14, lines 1-12; and on page 15, lines 18-23). The completion time of the first rebate is less than the promised completion time (see *Specification* on page 15, lines 18-23). The computer program product provides fourth instructions for generating a second rebate (**590**) in response to breeching the service level agreement (see *Specification* on page 12, lines 26-28; on page 13, lines 8-12; and on page 15, lines 11-18). The computer program product provides fifth instructions for providing the first rebate and the second to a customer when a plurality of discrepancies between the current service level and the promised service level occur (see

Specification on page14, lines 11-12; on page 15, lines 9-23; and on page 17, line 16, through page 18, line 21). The first rebate and the second rebate assure that the customer pays for service rendered (see *Specification* on page 23, lines 8-9). One of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement (see *Specification* on page13, lines 1-8). Another of the plurality of discrepancies occurs in response to breeching to the service level agreement (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). The computer program product provides sixth instructions for retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view (see *Specification* on page 12, lines 26-28; and on page 13, lines 8-12). The additional details include the rebate and an impact for breaching the service level agreement (see *Specification* on page 18, lines 3-21). The computer program product provides seventh instructions for switching between the infrastructure view and the application view (see *Specification* on page 18, lines 3-21).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The grounds of rejection to review on appeal are as follows:

A. GROUND OF REJECTION 1

The Final Office Action rejects claims 1, 2, 4-7, 9, 10-12, 14, 15, 16, 18-19, 21, 22, 24-25, 27, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Mikurak* (US 6,671,818 B1) in view of *Fraenkel et al.* (US 2003/0065986 A1), hereinafter referred to as *Fraenkel*, in view of *Brown et al.* (US 2003/0055677 A1), hereinafter referred to as *Brown*.

B. GROUND OF REJECTION 2

The Final Office Action rejects claims 3, 8, 17, and 23 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* in view of *Fraenkel* and *Brown*, and further in view of *Steele et al.* (US 2004/0174823 A1), hereinafter referred to as *Steele*.

C. GROUND OF REJECTION 3

The Final Office Action rejects claim 28 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* in view of *Fraenkel* and *Brown*, and further in view of *Vukovljak et al.* (US 2005/0286685), hereinafter referred to as *Vukovljak*.

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 1, 2, 4-7, 9, 10-12, 14, 15, 16, 18-19, 21, 22, 24-25, 27, and 29-30)

The Examiner rejects claims 1, 2, 4-7, 9, 10-12, 14, 15, 16, 18-19, 21, 22, 24-25, 27, and 29-30 under 35 U.S.C. § 103(a) as being unpatentable over *Mikurak* (US 6,671,818 B1) in view of *Fraenkel et al.* (US 2003/0065986 A1), hereinafter referred to as *Fraenkel*, in view of *Brown et al.* (US 2003/0055677 A1), hereinafter referred to as *Brown*. This rejection is respectfully traversed.

A.1. *Claims 1, 2, 4-7, 9, 15, 16, 21, 22, 27, and 29*

With respect to independent claims 1, 15, and 21, the Office Action states:

> **Regarding Claims 1, 15, and 21**
> Mikurak discloses a method and system for a utility computing environment comprising:
> • setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer (at least column 44, lines 62-67 and column 45, lines 1-8: thresholds set with SLA)
> • identifying a plurality of discrepancies between the promised service level and the current service level (at least column 44, lines 62-67 and column 45, lines l-8: performance goals tracked, notifications generated when not met)
> • generating rebates to the customer based on the plurality (at least column 47, lines 9-19: rebates given for SLA breaches)
> Mikurak does not disclose:
> • displaying a view of a current service level for the customer
> • presenting a view of a promised service level based on service level agreement parameters
> • wherein the rebates assure that the customer pays for services rendered
>
> Fraenkel teaches that it is known to include presenting and displaying a view of service level (at least figure 14) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system, as taught by Mikurak, with the presenting and displaying a service level, as taught by Fraenkel, since such a modification would have provided increased accuracy in monitoring resource performance and determining performance problems through a software system that monitors post-deployment operations of systems (at least paragraph [0011] of Fraenkel).

Brown teaches that it is known to include generating a rebate to credit a customer when completing a service request using less time and resources than specified in a service agreement (at least paragraph [0065]: utility service terms include rebate for unutilized capacity in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system, as taught by Mikurak, with the rebating for unutilized resources, as taught in Fraenkel, since such a modification would have provided increased accuracy in charging customers for utility usage (at least paragraph [0065] of Brown).

The examiner notes that though Mikurak and Brown does not explicitly disclose rebating for the specific discrepancies recited, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The step of providing a rebate would be performed in the same manner regardless of what discrepancy is credited. In other words, whether less time or any other resource is used than is set forth in the claimed service level agreement, the rebate is still provided in the same manner, to ensure that a customer pays only for services rendered. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.23d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a rebate for an service level agreement discrepancy because the type of discrepancy does not functionally relate to the steps in the method claimed and merely rebating an unused resource different from that in the prior art would have been obvious. See Gulack cited above.

Final Office Action dated January 31, 2008, pages 3-6.

Claim 1, which is representative of the other rejected independent claims 15 and 21 with regard to similarly recited subject matter, reads as follows:

1. A method in a data processing system for a utility computing environment, the method comprising:

setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer;

displaying a view of a current service level for the customer;

presenting a view of a promised service level based on service level agreement parameters;

identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

generating a first rebate in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

generating a second rebate in response to breeching the service level agreement; and

providing the first rebate and the second rebate to the customer for the plurality of discrepancies, wherein the first rebate and the second rebate assure that the customer pays for service rendered.
(emphasis added)

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be *prima facie* obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Mikurak, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest "identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching the service level agreement," as recited in claims 1, 15, and 21. Additionally, *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," and "generating a second rebate in response to breeching the service level agreement," as recited in claims 1, 15, and 21. In other words, there are two different types of discrepancies identified. A first rebate is generated in response to successfully completing a

service request using less time than specified in the service level agreement based on a completion time being less than a promised completion time. This type of discrepancy is different than the type of discrepancy identified in response to breeching the service level agreement. A second rebate is generated in response to breeching the service level agreement. *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest providing both the first rebate and the second rebate to the customer for the plurality of discrepancies. Therefore, the Examiner has not established a *prima facie* case of obviousness based on the prior art when rejecting claims 1, 15, and 21.

The Examiner alleges that generating the first and second rebates for the two different types of discrepancies would be performed in the same manner regardless of what discrepancy is credited. Appellants respectfully disagree. The plurality of discrepancies are used to determine both the first rebate and the second rebate. Breaches may occur for power outages, for hardware or software failures, and for not supporting a specific number of requests per day (see Specification on page 13, lines 8-18). A breach may not be time related. The Specification details more than one embodiment for determining rebates. Thus, the methods or calculations for generating the rebates for a breach discrepancy may differ since items associated with various breach discrepancies differ from items associated with discrepancies due to successfully completing a service request using less time than specified in the service level agreement based on a completion time being less than a promised completion time.

Mikurak is directed to a system, method and article of manufacture for managing life cycle network assets in a network based supply chain. The supply chain network is monitored, and events from network assets are received, filtered, and correlated, whereby problems with network assets are further isolated. The filtered and isolated events are then translated into a standard object format for facilitating the determination of the life cycle of problem network assets, wherein the events are translated by a comprehensive library of all possible message types provided by the custom software interfaces. In accordance with an embodiment of *Mikurak's* invention, the network assets include both packet-switched and circuit-switched network assets, and the events are received by custom software interfaces, which communicate directly with the network assets. See *Mikurak*, Abstract.

With respect to the rejection of claims 1, 15, and 21, the Final Office Action refers to the following portions of *Mikurak*:

> The process provides sufficient and relevant information to verify compliance/non-compliance to Service Level Agreements (SLA). The process provides sufficient usage information for rating and billing.
>
> This process ensures that the Network Performance goals are tracked, and that notification is provided when they are not met (threshold exceeded, performance degradation). This also includes thresholds and specific requirements for billing. This includes information on capacity, utilization, traffic and usage collection. In some cases, changes in traffic conditions may trigger changes to the network for the purpose of traffic control. Reduced levels of network capacity can result in requests to Network Planning for more resources.

Mikurak, column 44, line 62, through column 45, line 8.

> First, in step 1800, a hybrid network event is received which may include customer inquiries, required reports, completion notification, quality of service terms, service level agreement terms, service problem data, quality data, network performance data, and/or network configuration data. Next, in step 1802, the system determines customer reports to be generated and, in step 1804, generates the customer reports accordingly based on the event received.

Mikurak, column 46, lines 1-9.

> The Problem Handling Process 1502 and the Network Data Management 1300 feed information to the Rating and Discounting Process 1306, as shown in FIG. 23. This process applies the correct rating rules to usage data on a customer-by-customer basis, as required. It also applies any discounts agreed to as part of the Ordering Process, for promotional discounts and charges, and for outages. In addition, the Rating and Discounting Process 1306 applies any rebates due because service level agreements were not met. The aim is to correctly rate usage and to correctly apply discounts, promotions and credits.

Mikurak, column 47, lines 9-19.

Mikurak discloses verifying compliance and non-compliance to a service level agreement (i.e. a breach) and applying a rebate for not meeting a service level agreement. *Mikurak* does not mention the concept of generating a rebate based on a completion time being less than a promised completion time, which is an agreed upon amount of time to complete a service request specified in the service level agreement. These portions of *Mikurak* do not teach or suggest "identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 1, 15, and 21. In addition, these portions of *Mikurak* do

not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claims 1, 15, and 21. In addition, *Mikurak* does not mention the concept of providing both the first rebate, for a type of discrepancy identified in response to successfully completing a service request using less time than specified in the service level agreement, and a second rebate for breeching the service level agreement. Additionally, *Fraenkel* and *Brown* do not provide for the deficiencies of *Mikurak*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

Fraenkel is directed to a system for monitoring and analyzing the post-deployment performance of a web-based or other transactional server. The monitoring system includes agent components that monitor and report various performance parameters associated with the transactional server, such as response times seen by end users, server and network times, and various server resource utilization parameters. A web-based reports server displays the data collected by the agents through a series of charts and graphs that indicate whether correlations exist between the response times and lower level parameters. A root cause analysis system applies statistical algorithms to the collected data to detect performance degradations in specific parameters, and uses predefined parameter dependency rules to correlate high level performance problems to likely sources or causes of such problems. See *Fraenkel*, Abstract.

With respect to the rejection of claims 1, 15, and 21, the Final Office Action refers to Figure 14, Figure 22, Figure 29, and the following paragraph of *Fraenkel*:

> [0011] Another significant problem with prior tools and services is that they generally do not provide a mechanism for identifying the source of performance problem. For instance, a web site monitoring service may determine that users are currently experiencing unusually long response times, but typically will not be capable of determining the source of the problem. Thus, a system administrator may be required to review significant quantities of measurement data, and/or conduct additional testing, to pinpoint the source or cause of the detected problem.

Fraenkel, paragraph [0011].

This paragraph of *Fraenkel* only states that it is difficult to identify the source or cause of a detected problem and that generally prior tools do not provide a mechanism for identify the source of performance problems. *Fraenkel* does not mention service level agreements, rebates, or presenting a view of a promised service level. Figures 14, 22, and 29 of *Fraenkel* only disclose displaying views of transaction performance. These portions of *Fraenkel* do not teach or suggest "identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 1, 15, and 21. In addition, these portions of *Fraenkel* do not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claims 1, 15, and 21. Additionally, *Mikurak* and *Brown* do not provide for the deficiencies of *Fraenkel*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

Brown is directed to an Internet-based utility management system that presents estimated utility prices, usage terms, and a predicted load profile to a customer. The estimated utility prices include predicted prices of a utility during certain future periods of time. The usage terms include a utility usage threshold for each certain future period of time below which the estimated price applies. The predicted load profile includes predicted utility usage of the customer for each certain future period of time and presented such that any variation between the usage terms and the predicted load profile is readily apparent. See *Brown*, Abstract.

With respect to the rejection of claims 1, 15, and 21, the Final Office Action refers to Figure 6A and the following portions of *Brown*:

> [0065] Reaching the agreement 440 as to estimated utility prices 405 and usage terms 410 also may include negotiating a rebate for unutilized capacity. The utility supplier and/or the host may implement a rebate program. As discussed above, a utility supplier (e.g., power company) may charge a customer for reserving

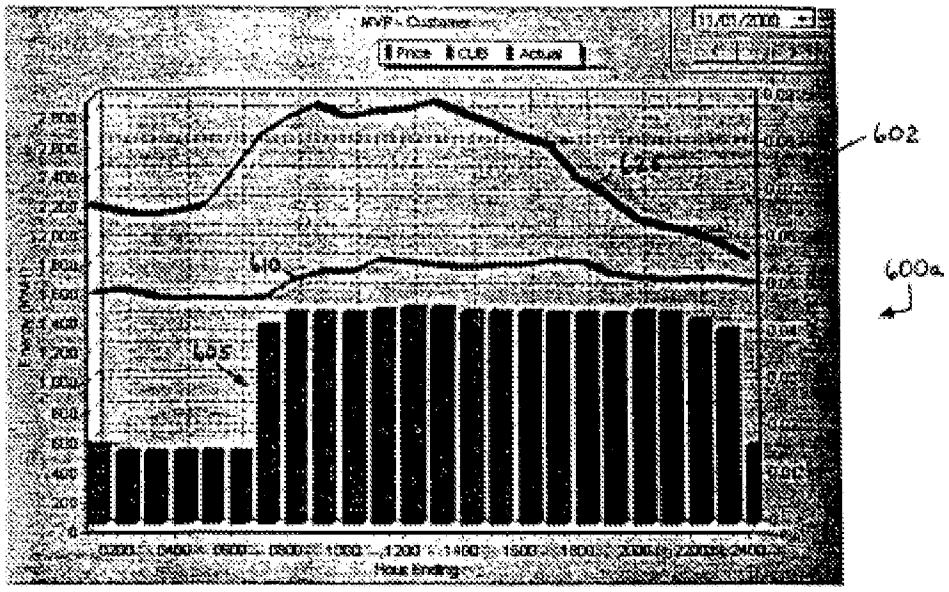
capacity based on the customer's past peak demand for certain time interval (e.g., past twelve months). In this type of pricing arrangement, the utility supplier establishes a baseline capacity (e.g., 1800 kWh), charges the customer for the right to use the capacity even if the customer does not use the total amount, and charges the customer a penalty if the baseline capacity is exceeded. In a deregulated market, however, it may not be practical for a utility supplier to require that customers pay for unutilized capacity, particularly if the customers have access to real-time utility consumption data. Indeed, if customers are able to accurately monitor actual usage, competition may dictate that utility suppliers charge customers only for the amount of utility that is consumed.

Brown, paragraph [0065].

[0089] Referring to FIGS. 6A and 6B, a user interface (UI) 600a and/or a UI 600b may be presented by the host to customers and/or utility suppliers. By viewing the UIs 600a and 600b, a customer is able to review actual utility consumption and expenses and alter future utility consumption. A customer may identify activities resulting in utility overuse and plan to avoid such activities in the future. A customer having several facilities may examine consumption and expenses for all facilities or target a specific facility.

Brown, paragraph [0089].

FIG. 6A



Brown, Figure 6A.

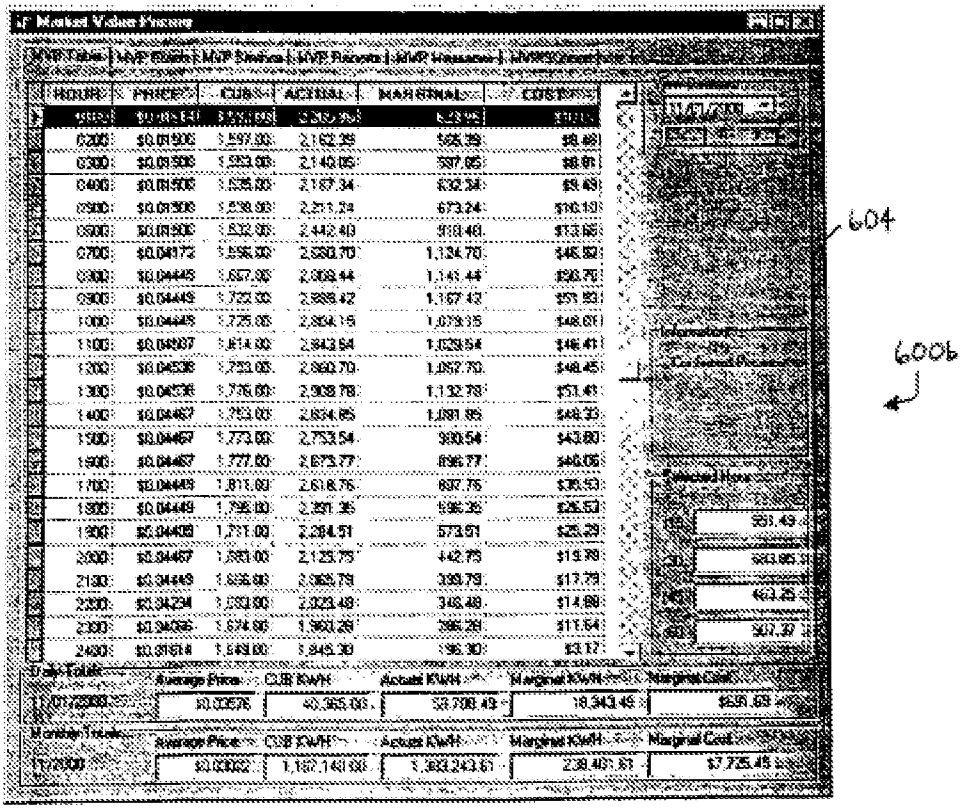


FIG. 6B

Brown, Figure 6B.

These portions of *Brown* disclose negotiating a rebate for unutilized capacity of a utility and charging the customer for the amount of utility that is consumed. *Brown's* **Figure 6B** shows a severity level in dollar amounts for a difference between the customer usage baseline and the actual usage. *Brown's* "actual usage" is based on an amount of usage of a utility resource for a specified period of time. *Brown* does not teach the concept of generating a rebate based on a completion time being less than a promised completion time or the concept of providing both a first rebate and a second rebate for the plurality of discrepancies to assure that the customer pays for service rendered. These portions of *Brown* do not teach or suggest "identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 1, 15, and 21. In addition, these portions of *Brown* do not teach or suggest "generating a

first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claims 1, 15, and 21. Additionally, *Mikurak* and *Fraenkel* do not provide for the deficiencies of *Brown*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

Mikurak, *Fraenkel* and *Brown* fail to teach or suggest "identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 1, 15, and 21. In addition, *Mikurak*, *Fraenkel* and *Brown* fail to teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claims 1, 15, and 21. Therefore, the alleged combination of *Mikurak*, *Fraenkel* and *Brown* does not teach or suggest these features.

In view of the above, the Examiner has not established a *prima facie* case of obviousness based on the prior art when rejecting claims 1, 15, and 21. Thus, Appellants respectfully request withdrawal of the rejection of independent claims 1, 15, and 21 under 35 U.S.C. §103(a). Additionally, *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest the features of dependent claims 2, 4-7, 9, 16, 22, 27, and 29 at least by virtue of their dependency on independent claims 1, 15, and 21, respectively. Accordingly, Appellants respectfully request withdrawal of the rejection of claims 2, 4-7, 9, 16, 22, 27, and 29 under 35 U.S.C. §103(a).

A.2. *Claims 10, 11-14, 24, 25, and 30*

With respect to independent claims 10 and 24, the Final Office Action states:

Regarding Claims 10 and 24

Mikurak discloses:

- presenting a promised service level based on a service level agreement (at least column 46, lines 1-9: customer reports generated of SLA parameters)
- providing a rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occurs (at least column 47, lines 9-19: rebates given for SLA breaches)

Mikurak does not disclose:

- displaying at least one of an infrastructure view and an application view of a current service level for a customer, wherein the infrastructure view contains information technology hardware and software components, wherein the application view contains software applications residing on utility computing resources, and wherein the infrastructure view and the application view are linked
- retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view
- switching between the infrastructure view and the application view
- wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level and wherein the relationship indicates a progress level of a service request with a respect to a service level agreement with a customer

Fraenkel teaches that it is known to include an infrastructure view containing information technology hardware and software components (at least figure 29: server and memory performance and software performance displayed) and an application view containing software applications (at least figure 22: software (transaction performance displayed), linking the views (at least figures 22, 29: pages linked by menu on left side), retrieving additional details with a mouse click (at least figures 22, 29: date menus at top can be clicked to retrieve additional details), and switching between views (at least figures 22, 29: views switched between via menu on left side) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and method, as taught by Mikurak, with the infrastructure view and application view, and their functionalities, as taught by Fraenkel, since such a modification would have provided increased accuracy in monitoring resource performance and determine performance problems through a software system that monitors post-deployment operations of systems (at least paragraph [0011] of Fraenkel).

Brown teaches that it is known to include presented a view of a relationship between a promised service level and a current service level (at least

figure 6A: allocated utility capacity and actual utility usage) and generating a rebate to credit a customer when completing a service request using less time and resources than specified in a service agreement (at least paragraph [0065]: utility service terms include rebate for unutilized capacity) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and method, as taught by Mikurak, with the display of a relationship of service levels and rebates, as taught by Brown, since such a modification would have provided an improved utility management for customers through an interface that allows a user to identify activities that result in utility overuse (at least paragraph [0089] of Brown).

The examiner notes that though Brown does not explicitly disclose rebating for the specific discrepancies recited, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The step of providing a rebate would be performed in the same manner regardless of what discrepancy is credited. In other words, whether less time or any other resource is used than is set forth in the claimed service level agreement, the rebate is still provided in the same manner, to ensure that a customer pays only for services rendered. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.23d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a rebate for an service level agreement discrepancy because the type of discrepancy does not functionally relate to the steps in the method claimed and merely rebating an unused resource different from that in the prior art would have been obvious. See Gulack cited above.

Final Office Action dated January 31, 2008, pages 9-12.

Claim 10, which is representative of the other rejected independent claim 24 with regard to similarly recited subject matter, reads as follows:

10. A method in a data processing system for a utility computing environment, the method comprising:

displaying at least one of an infrastructure view and an application view of a current service level for a customer, wherein the infrastructure view contains information technology hardware and software components, wherein the application view contains software applications residing on utility computing resources, and wherein the infrastructure view and the application view are linked;

presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer;

generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

generating a second rebate in response to breeching the service level agreement;

providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view, wherein the additional details include the rebate and an impact for breaching the service level agreement; and

switching between the infrastructure view and the application view. (emphasis added)

As discussed above, *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," and "generating a second rebate in response to breeching the service level agreement," as recited in claims 10 and 24. In addition, *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest "providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as

recited in claims 10 and 24. Therefore, the Examiner has not established a *prima facie* case of obviousness based on the prior art when rejecting claims 10 and 24.

With respect to the rejection of claims 10 and 24, the Final Office Action refers to the following portions of *Mikurak*:

> First, in step 1800, a hybrid network event is received which may include customer inquiries, required reports, completion notification, quality of service terms, service level agreement terms, service problem data, quality data, network performance data, and/or network configuration data. Next, in step 1802, the system determines customer reports to be generated and, in step 1804, generates the customer reports accordingly based on the event received.

Mikurak, column 46, lines 1-9.

> The Problem Handling Process 1502 and the Network Data Management 1300 feed information to the Rating and Discounting Process 1306, as shown in FIG. 23. This process applies the correct rating rules to usage data on a customer-by-customer basis, as required. It also applies any discounts agreed to as part of the Ordering Process, for promotional discounts and charges, and for outages. In addition, the Rating and Discounting Process 1306 applies any rebates due because service level agreements were not met. The aim is to correctly rate usage and to correctly apply discounts, promotions and credits.

Mikurak, column 47, lines 9-19.

Mikurak discloses verifying compliance and non-compliance to a service level agreement and applying a rebate for not meeting a service level agreement. *Mikurak* does not mention the concept of providing both a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time and a second rebate in response to breeching to the service level agreement. Thus, these portions of *Mikurak* do not teach or suggest "providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 10 and 24. Additionally, *Fraenkel* and *Brown* do not provide for the deficiencies of *Mikurak*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

With respect to the rejection of claims 10 and 24, the Final Office Action refers to Figure 14, Figure 22, Figure 29, and the following paragraph of *Fraenkel*:

> [0011] Another significant problem with prior tools and services is that they generally do not provide a mechanism for identifying the source of performance problem. For instance, a web site monitoring service may determine that users are currently experiencing unusually long response times, but typically will not be capable of determining the source of the problem. Thus, a system administrator may be required to review significant quantities of measurement data, and/or conduct additional testing, to pinpoint the source or cause of the detected problem.

Fraenkel, paragraph [0011].

This paragraph of *Fraenkel* only states that it is difficult to identify the source or cause of a detected problem and that generally prior tools do not provide a mechanism for identify the source of performance problems. *Fraenkel* does not mention service level agreements, rebates, or presenting a view of a promised service level. Figures 14, 22, and 29 of *Fraenkel* only disclose displaying views of transaction performance. *Fraenkel* does not teach or suggest "providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 10 and 24. Additionally, *Mikurak* and *Brown* do not provide for the deficiencies of *Fraenkel*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

With respect to the rejection of claims 10 and 24, the Final Office Action refers to Figure 6A and the following portions of *Brown*:

> [0065] Reaching the agreement 440 as to estimated utility prices 405 and usage terms 410 also may include negotiating a rebate for unutilized capacity. The utility supplier and/or the host may implement a rebate program. As discussed above, a utility supplier (e.g., power company) may charge a customer for reserving capacity based on the customer's past peak demand for certain time interval (e.g., past twelve months). In this type of pricing arrangement, the utility supplier establishes a baseline capacity (e.g., 1800 kWh), charges the customer for the right to use the capacity even if the customer does not use the total amount, and

> charges the customer a penalty if the baseline capacity is exceeded. In a deregulated market, however, it may not be practical for a utility supplier to require that customers pay for unutilized capacity, particularly if the customers have access to real-time utility consumption data. Indeed, if customers are able to accurately monitor actual usage, competition may dictate that utility suppliers charge customers only for the amount of utility that is consumed.

Brown, paragraph [0065].

> [0089] Referring to FIGS. 6A and 6B, a user interface (UI) 600a and/or a UI 600b may be presented by the host to customers and/or utility suppliers. By viewing the UIs 600a and 600b, a customer is able to review actual utility consumption and expenses and alter future utility consumption. A customer may identify activities resulting in utility overuse and plan to avoid such activities in the future. A customer having several facilities may examine consumption and expenses for all facilities or target a specific facility.

Brown, paragraph [0089].

These portions of *Brown* disclose negotiating a rebate for unutilized capacity of a utility and charging the customer for the amount of utility that is consumed. *Brown's* "actual usage" is based on an amount of usage of a utility resource for a specified period of time. *Brown* does not teach the concept of generating a rebate based on a completion time being less than a promised completion time or the concept of providing both a first rebate and a second rebate for the plurality of discrepancies to assure that the customer pays for service rendered. *Brown* does not teach or suggest "providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 10 and 24. Additionally, *Mikurak* and *Fraenkel* do not provide for the deficiencies of *Brown*. Thus, *Mikurak*, *Fraenkel*, and *Brown*, taken alone or in combination, do not teach or suggest these features.

Mikurak, *Fraenkel* and *Brown* fail to teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein

the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," and "generating a second rebate in response to breeching the service level agreement," as recited in claims 10 and 24. In addition, *Mikurak*, *Fraenkel* and *Brown* fail to teach or suggest "providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement," as recited in claims 10 and 24. Therefore, the alleged combination of *Mikurak*, *Fraenkel* and *Brown* does not teach or suggest these features.

In view of the above, the Examiner has not established a *prima facie* case of obviousness based on the prior art when rejecting claims 10 and 24. Thus, Appellants respectfully request withdrawal of the rejection of independent claims 10 and 24 under 35 U.S.C. §103(a). Additionally, *Mikurak*, *Fraenkel* and *Brown*, taken individually or in combination, do not teach or suggest the features of dependent claims 11-12, 14, 25, and 30 at least by virtue of their dependency on independent claims 10 and 24, respectively. Accordingly, Appellants respectfully request withdrawal of the rejection of claims 11-12, 14, 25, and 30 under 35 U.S.C. §103(a).

B. GROUND OF REJECTION 2 (Claims 3, 8, 17, and 23)

The Final Office Action rejects claims 3, 8, 17, and 23 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* in view of *Fraenkel* and *Brown*, and further in view of *Steele et al.* (US 2004/0174823 A1), hereinafter referred to as *Steele*. This rejection is respectfully traversed.

Since claims 3, 8, 17, and 23 depend from independent claims 1, 15, and 21, respectively, the same distinctions between *Mikurak*, *Fraenkel*, *Brown*, and the invention recited in claims 1, 15, and 21 apply to dependent claims 3, 8, 17, and 23. In addition, *Steele* does not provide for the deficiencies of *Mikurak*, *Fraenkel*, and *Brown* with regard to independent claims 1, 15, and 21. *Steele* is directed to a method and apparatus for designating and implementing support level agreements. *Steele* is cited for disclosing that a user enters support level agreement parameters in

a window and that a support level agreement window can be customized. *Steele* does not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claims 1, 15, and 21. Thus, any alleged combination of *Mikurak*, *Fraenkel*, and *Brown* with *Steele* still would not result in the invention recited in claims 1, 15, and 21 from which claims 3, 8, 17, and 23 depend. Accordingly, Appellants respectfully request withdrawal of the rejection of claims 3, 8, 17, and 23 under 35 U.S.C. §103(a).

C. GROUND OF REJECTION 3 (Claim 28)

The Final Office Action rejects claim 28 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* in view of *Fraenkel* and *Brown*, and further in view of *Vukovljak et al.* (US 2005/0286685), hereinafter referred to as *Vukovljak*. This rejection is respectfully traversed.

Since claim 28 depends from independent claim 1, through claim 27, the same distinctions between *Mikurak*, *Fraenkel*, *Brown*, and the invention recited in claim 1 applies to dependent claim 28. In addition, *Vukovljak* does not provide for the deficiencies of *Mikurak*, *Fraenkel*, and *Brown* with regard to independent claim 1. *Vukovljak* is directed to a monitoring station system and method for monitoring multiple dial-up points in a communication network. Test data regarding availability and response time of the dial-up point can be obtained. *Vukovljak* is cited for stating that near real-time reports include simple "traffic light" type indicators and a visual data analysis tool allowing examination of trend data. *Vukovljak* does not teach or suggest "generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time," as recited in claim 1. Thus, any alleged combination of *Mikurak*, *Fraenkel*, and *Brown* with *Vukovljak* still would not

result in the invention recited in claim 1 from which claim 28 depends. Accordingly, Appellants respectfully request withdrawal of the rejection of claim 28 under 35 U.S.C. §103(a).

D. CONCLUSION

As shown above, the examiner has failed to state valid rejections against any of the claims. Therefore, Appellants request that the Board of Patent Appeals and Interferences reverse the rejections.

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CLAIMS APPENDIX

The text of the claims involved in the appeal is as follows:

1. A method in a data processing system for a utility computing environment, the method comprising:

setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer;

displaying a view of a current service level for the customer;

presenting a view of a promised service level based on service level agreement parameters;

identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

generating a first rebate in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

generating a second rebate in response to breeching the service level agreement; and

providing the first rebate and the second rebate to the customer for the plurality of

discrepancies, wherein the first rebate and the second rebate assure that the customer pays for service rendered.

2. The method of claim 1, wherein the service level agreement parameters include at least one of a duration, a transaction, a configuration, and a threshold.

3. The method of claim 1 further comprising:

modifying the service level thresholds using a graphical user interface.

4. The method of claim 1, wherein the service level thresholds are used to generate a warning prior to the occurrence of the plurality of discrepancies.

5. The method of claim 1, wherein breaching the service level agreement includes exceeding the service level agreement parameters, hardware failures, hardware outages, software failures, performance failures, and failure to meet agreed upon requirements of the service level agreement.

6. The method of claim 1, wherein the service level thresholds are set for at least one of a customer, a service provider, and a utility computing host.

7. The method of claim 6 further comprising:

alerting the at least one of the customer, the service provider, and the utility computing host of the plurality of discrepancies and a root cause for the plurality of discrepancies.

8. The method of claim 1 further comprising:

providing an option to customize the view of the current service level and the view of the promised service level.

9. The method of claim 1, wherein the view of a current service level is at least one of a real-time view and a historical view.

10. A method in a data processing system for a utility computing environment, the method comprising:

displaying at least one of an infrastructure view and an application view of a current service level for a customer, wherein the infrastructure view contains information technology hardware and software components, wherein the application view contains software applications residing on utility computing resources, and wherein the infrastructure view and the application view are linked;

presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer;

generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed

upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

generating a second rebate in response to breeching the service level agreement;

providing the first rebate and the second rebate to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view, wherein the additional details include the rebate and an impact for breaching the service level agreement; and

switching between the infrastructure view and the application view.

11. The method of claim 10, wherein a view of the current service level includes at least one of a warning, an alert, a breach, a duration, a transaction, a configuration, a threshold, a rebate, a utility computing resource, a consumed computer resource, and a consumed human resource.

12. The method of claim 10 further comprising:

alerting at least one of a customer, a service provider, and a utility computing host of ~~a~~ the plurality of discrepancies between the current service level and the promised service level, wherein the relationship shows a severity level for the plurality of discrepancies.

14. The method of claim 10, wherein breaching the service level agreement includes exceeding service level agreement parameters, hardware failures, hardware outages, software failures, performance failures, and failure to meet agreed upon requirements of the service level agreement.

15. A data processing system for a utility computing environment, the data processing system comprising:

setting means for setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer;

displaying means for displaying a view of a current service level for the customer;

presenting means for presenting a view of a promised service level based on service level agreement parameters;

identifying means for identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

first generating means for generating a first rebate in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

second generating means for generating a second rebate in response to breeching the service level agreement; and

providing means for providing the first rebate and the second rebate to the customer for the plurality of discrepancies, wherein the first rebate and the second rebate assure that the customer pays for service rendered.

16. The data processing system of claim 15 further comprising:

alerting means for alerting at least one of a customer, a service provider, and a utility computing host of the plurality of discrepancies and a root cause for the plurality of discrepancies.

17. The data processing system of claim 15 further comprising:

providing means for providing an option to customize the view of the current service level and the view of the promised service level.

21. A computer program product in a computer recordable-type medium having encoded thereon instructions executed on a computer for a utility computing environment, the computer program product comprising:

first instructions for setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer;

second instructions for displaying a view of a current service level for the customer;

third instructions for presenting a view of a promised service level based on service level

agreement parameters;

fourth instructions for identifying a plurality of discrepancies between the promised service level and the current service level, wherein one of the plurality of discrepancies occurs in response to successfully completing a service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

fifth instructions for generating a first rebate in response to successfully completing the service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

sixth instructions for generating a second rebate in response to breeching the service level agreement; and

seventh instructions for providing the first rebate and the second rebate to the customer for the plurality of discrepancies, wherein the first rebate and the second rebate assure that the customer pays for service rendered.

22. The computer program product of claim 21 further comprising:

instructions for alerting at least one of a customer, a service provider, and a utility computing host of the plurality of discrepancies and a root cause for the plurality of discrepancies.

23. The computer program product of claim 21 further comprising:

instructions for providing an option to customize the view of the current service level and the view of the promised service level.

24. A computer program product in a computer recordable-type medium having encoded thereon instructions executed on a computer for a utility computing environment, the computer program product comprising:

first instructions for displaying at least one of an infrastructure view and an application view of a current service level for a customer, wherein the infrastructure view contains information technology hardware and software components, wherein the application view contains software applications residing on utility computing resources, and wherein the infrastructure view and the application view are linked;

second instructions for presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer;

third instructions for generating a first rebate in response to successfully completing a service request using less time than specified in the service level agreement based on a completion time and a promised completion time, wherein the completion time is an amount of time used to successfully complete the service request, wherein the promised completion time is an agreed upon amount of time to complete the service request specified in the service level agreement, and wherein the completion time is less than the promised completion time;

fourth instructions for generating a second rebate in response to breeching the service level agreement;

fifth instructions for providing the first rebate and the second to a customer when a plurality of discrepancies between the current service level and the promised service level occur, wherein the first rebate and the second rebate assure that the customer pays for service rendered, wherein one of the plurality of discrepancies occurs in response to successfully completing the service request using less time than specified in the service level agreement, and wherein another of the plurality of discrepancies occurs in response to breeching to the service level agreement;

sixth instructions for retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view, wherein the additional details include the rebate and an impact for breaching the service level agreement; and

seventh instructions for switching between the infrastructure view and the application view.

25. The computer program product of claim 24 further comprising:

instructions for alerting at least one of a customer, a service provider, and a utility computing host of the plurality of discrepancies between the current service level and the promised service level, wherein the relationship shows a severity level for the plurality of discrepancies.

27. The method of claim 1 further comprising:

displaying a relationship between the current service level and the promised service level based on the service level agreement parameters, wherein the relationship indicates a severity level for the plurality of discrepancies.

28. The method of claim 27, wherein a severity level indicator comprises a red light, a yellow light, and a green light on a traffic light.

29. The method of claim 1, wherein the first rebate is additionally based on crediting the customer when successfully completing a service request using both less time and less resources than specified in the service level agreement.

30. The method of claim 10, wherein the first rebate is additionally based on crediting the customer when successfully completing a service request using both less time and less resources than specified in the service level agreement.

EVIDENCE APPENDIX

This appeal brief presents no additional evidence.

RELATED PROCEEDINGS APPENDIX

This appeal has no related proceedings.